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7 KENNETH E. STEWART,  
8 Plaintiff,  
9 v.  
10 LAURIE SMITH, et al.,  
11 Defendants.  
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Case No.[16-cv-03977-JST](#)

**ORDER OF SERVICE**

14 **INTRODUCTION**

15 Plaintiff, an inmate at San Quentin State Prison, filed this pro se civil rights action pursuant  
16 to 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order.  
17 His complaint is now before the Court for review under 28 U.S.C. § 1915A.

18 **DISCUSSION**

19 **A. Standard of Review**

20 A federal court must engage in a preliminary screening of any case in which a prisoner  
21 seeks redress from a governmental entity, or from an officer or an employee of a governmental  
22 entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and  
23 dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be  
24 granted, or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C.  
25 § 1915A(b) (1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police  
26 Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

27 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
28 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not

1 necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the  
2 grounds upon which it rests.’” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citations omitted).  
3 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more  
4 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
5 do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.”  
6 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must  
7 proffer “enough facts to state a claim to relief that is plausible on its face.” Id. at 570.

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
9 right secured by the Constitution or laws of the United States was violated; and (2) that the  
10 violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S.  
11 42, 48 (1988).

## 12 **B. Legal Claims**

13 According to the complaint, Plaintiff was unlawfully detained in Santa Clara County Jail  
14 four days past his release date of February 25, 2016. Docket No. 1 at 4. Plaintiff was released on  
15 February 29, 2016, without being provided with mental health medication and without being  
16 provided food or shelter. Id. at 4. Plaintiff alleges that these acts caused him to suffer three  
17 psychotic breakdowns, each of which resulted in him being arrested. Id. Plaintiff alleges that  
18 these actions and inactions violated his rights under the Fifth Amendment, the Eighth Amendment,  
19 and Fourteenth Amendment of the United States Constitution; Articles 3, 5, 7, and 26 of the  
20 Universal Declaration of Human Rights (“Declaration”); and Sections 1, 7, 15, 17, 29 and 31 of  
21 the California Constitution. Id. at 4–5. Plaintiff also alleges that his unlawful detention  
22 constituted unlawful imprisonment. Plaintiff names as defendants Sheriff Laurie Smith, and Santa  
23 Clara County Valley Medical Center Mental Health Supervisor George Centhaner. Id. at 2.  
24 Plaintiff seeks compensatory and punitive damages. Id. at 3.

### 25 **1. Federal Claims**

26 Liberally construed, Plaintiff states a cognizable Eighth Amendment claim against  
27 Defendants for releasing him without mental health medication. Wakefield v. Thompson, 177  
28 F.3d 1160, 1164 (9th Cir. 1999) (Eighth Amendment requires “state [to] provide an outgoing

1 prisoner who is receiving and continues to require medication with a supply sufficient to ensure  
2 that he has that medication available during the period of time reasonably necessary to permit him  
3 to consult a doctor and obtain a new supply"). However, Plaintiff's allegation that he was not  
4 provided food and shelter upon his release from prison does not state a cognizable constitutional  
5 claim. There is no constitutional right to food and shelter upon one's release from prison. This  
6 claim is DISMISSED with prejudice.

7 Liberally construed, Plaintiff's allegation that he was detained beyond his release date  
8 states cognizable Eighth Amendment and Fourteenth Amendment claims against Sheriff Laurie  
9 Smith.<sup>1</sup> See Brass v. Cty. of Los Angeles, 328 F.3d 1192, 1200 (9th Cir. 2003) (prisoner "may  
10 have had a due process right to be released within a reasonable time after the reason for his  
11 detention ended"); Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) ("Detention of  
12 [plaintiff] beyond the termination of his sentence was undoubtedly punishment within the  
13 constitutional meaning of [the term cruel and unusual punishment]"). However, this allegation  
14 fails to state a claim against George Centhaner, whom Plaintiff identifies as the Santa Clara  
15 County Valley Medical Center ("SCCVMC") Mental Health Supervisor. Plaintiff has made no  
16 allegation from which it may be inferred that Centhaner participated in Plaintiff's over-detention.  
17 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (individual liability under § 1983 arises only  
18 upon a showing of personal participation by the defendant); see also Avalos v. Baca, 596 F.3d  
19 583, 587 (9th Cir. 2010) (for liability to attach to prison official in his individual capacity, plaintiff  
20 must show that prison official personally participated in his over-detention or that it was the result  
21 of a pattern or custom on his part), Mortimer v. Baca, 594 F.3d 714, 722–23 (9th Cir. 2010) (in  
22 order for liability to attach to a prison official in his official capacity, plaintiff must show that his  
23 over-detention was the result of a set of policies — or lack of policies — that amounted to a policy  
of deliberate indifference).

24 **2. State-law Claims**

25 Liberally construed, Plaintiff has stated a cognizable state law claim of false imprisonment.

26  
27 <sup>1</sup> Plaintiff incorrectly argues that his over-detention also violated his due process rights under the  
28 Fifth Amendment. The Due Process Clause of the Fifth Amendment applies to the federal  
government while the Due Process Clause of the Fourteenth Amendment prohibits state action.  
See Dusenberry v. United States, 534 U.S. 161, 167 (2002).

1 Shoyoye v. Cty. of Los Angeles, 137 Cal. Rptr. 3d 839, 851 (Cal. Ct. App. 2012) (“The elements  
2 of a tortious claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a  
3 person, (2) without lawful privilege, and (3) for an appreciable period of time, however brief.”)  
4 (citing Easton v. Sutter Coast Hospital, 95 Cal. Rptr. 2d 316, 323 (Cal. Ct. App. 2000)).

5 Plaintiff also makes a general statement that Defendants have violated his rights under  
6 Sections 1, 7, 15, 17, 29 and 31 of Article 1<sup>2</sup> of the California Constitution. Docket No. 1 at 4–5.

7 Section 1 provides as follows:

8 All people are by nature free and independent and have inalienable rights. Among these are  
9 enjoying and defending life and liberty, acquiring, possessing, and protecting property, and  
pursuing and obtaining safety, happiness, and privacy.

10 Cal. Const. art. I, § 1. Plaintiff does not specify how Defendants have violated section 1, and his  
11 allegations that Defendants overdetained him and failed to provide him with a sufficient supply of  
12 medication, food, or shelter upon his release from prison fail to state cognizable claims for relief  
13 under section 1. Moreover, “although safety and happiness are inalienable rights[, . . . n]o case  
14 has ever held that this provision . . . is self-executing in the sense that it gives rise, in and of itself,  
15 to a private right of action for damages or an affirmative duty on the part of the state to take  
16 particular steps to guarantee the enjoyment of safety or happiness by all citizens.” Clausing v. San  
17 Francisco Unified Sch. Dist., 271 Cal. Rptr. 72, 79 n.6 (Cal. Ct. App. 1990). Accordingly,  
18 Plaintiff’s claims based on section 1 are DISMISSED with prejudice.

19 The Court liberally construes the complaint’s reference to sections 7 and 15 as alleging a  
20 violation of the due process clauses set forth in both sections.<sup>3</sup> Plaintiff’s claims based on sections  
21 7 and 15 are DISMISSED with prejudice because there is no private right of action under either of  
22 these section. In Katzberg v. Regents of Univ. of Cal., 29 Cal. 4th 300, 303 (Cal. 2002), the  
23 California Supreme Court found that no precedential authority exists for recognizing a private

24 <sup>2</sup> Plaintiff does not specify to which article of the California Constitution he is referring. The  
25 Court presumes that he is referring to Article 1 of the California Constitution. All subsequent  
26 references to section numbers are to sections within Article 1 of the California Constitution.

27 <sup>3</sup> In addition to guaranteeing due process, section 7 also provides that a person may not be  
28 deprived of life, liberty, or property without equal protection of the laws, and that citizens may not  
be granted privileges or immunities that are not granted on the same terms to all citizens. Cal.  
Const. art. I, § 7. Section 15 provides that a criminal defendant has the right to a speedy public  
trial, to compel attendance of witnesses, to be personally present with counsel at his trial, and  
against self-incrimination; and also prohibits double jeopardy. Cal. Const. art. I, § 15.

1 right of action in damages for violations of section 7. Katzberg, 29 Cal. 4th at 324–29 (also noting  
2 the availability of meaningful alternative remedies). A private right of action in damages for  
3 violations of section 15 is precluded on the same grounds. See Reinhardt v. Santa Clara Cty., No.  
4 C 05-05143 HRL, 2006 WL 662741, at \*8 (N.D. Cal. 2006) (applying analysis set forth in  
5 Katzberg and dismissing section 15 claim because section 15 “does not manifest an intent to  
6 include a damages remedy, and because there are adequate alternative forms of relief (habeas  
7 corpus and the Bane Act)”) (also citing to Walker v. Cty. of Santa Clara, No. C 04-02211 RMW,  
8 2005 WL 2437037 at \*7 (N.D. Cal. 2005)).

9 Plaintiff’s claim based on section 17<sup>4</sup> will also be DISMISSED with prejudice because  
10 there is also no precedential authority for recognizing a private right of action for damages under  
11 this section. Giraldo v. California Dep’t of Corr. & Rehab., 85 Cal. Rptr. 3d 371, 388–91 (Cal. Ct.  
12 App. 2008) (applying analysis set forth in Katzberg).

13 Plaintiff’s claim based on section 29 will be DISMISSED with prejudice because section  
14 29 is inapplicable to Plaintiff’s case. Section 29 provides that “[i]n a criminal case, the people of  
15 the State of California have the right to due process of law and to a speedy and public trial.” Cal.  
16 Const. art. I, § 29. Plaintiff has not alleged that he failed to receive due process of law with  
17 respect to his criminal case, or that he failed to receive a speedy or public trial.

18 Finally, Plaintiff’s claim based on Section 31 will also be DISMISSED with prejudice  
19 because section 31 is inapplicable to Plaintiff’s case. Section 31 provides in relevant part that the  
20 state shall not discriminate on the basis of race, sex, color, ethnicity, or national origin in the  
21 operation of public employment, public education, or public contracting. Cal. Const. art. I, § 31.  
22 There are no allegations of discrimination in Plaintiff’s complaint and his allegations do not  
23 involve public employment, public education, or public contracting.

### 24       3.     Universal Declaration of Human Rights Claims

25       The United States Supreme Court has found that “the [Universal] Declaration [of Human  
26 Rights] does not of its own force impose obligations as a matter of international law.” Sosa v.  
27 Alvarez-Machain, 542 U.S. 692, 734 (2004). The Declaration is a “non-binding resolution[ ] of

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28       <sup>4</sup> Section 17 of the California Constitution prohibits the infliction of cruel and unusual punishment  
and the levying of excessive fines. Cal. Const. art. I, § 17.

1 the General Assembly of the United Nations.” Siderman de Blake v. Republic of Arg., 965 F.2d  
2 699, 719 (9th Cir. 1992) (explaining that the resolution “creates legal obligations only insofar as it  
3 represents evidence of customary international law”). Therefore, the Declaration cannot by itself  
4 support creation of a cause of action. Sosa, 542 U.S. at 734–38. Since this international  
5 instrument does not create a cause of action, Plaintiff’s claims under the Declaration fails to state a  
6 claim upon which relief may be granted, and are DISMISSED with prejudice. UMG Recordings,  
7 Inc. v. Shelter Capital Partners, LLC, 718 F.3d 1006, 1014 (9th Cir. 2013) (dismissal can be based  
8 on lack of cognizable legal theory).

## CONCLUSION

9 1. Plaintiff has stated the following cognizable claims: an Eighth Amendment claim  
10 against Defendants for releasing him without mental health medication; Eighth Amendment and  
11 Fourteenth Amendment claims against Sheriff Laurie Smith for overdetention; and a state-law  
12 claim against Sheriff Laurie Smith for false imprisonment. The following claims are DISMISSED  
13 with prejudice: Plaintiff’s claim that his federal constitutional rights were violated when  
14 Defendants failed to provide him with food and shelter upon his release from prison; Plaintiff’s  
15 claim that Centhaner over-detained Plaintiff; Plaintiff’s claims that his rights under the California  
16 Constitution were violated; and Plaintiff’s claims that his rights under the Universal Declaration of  
17 Human Rights were violated.

18 2. The Clerk of the Court shall issue summons and the United States Marshal shall  
19 serve, without prepayment of fees, a copy of the complaint (Docket No. 1), and a copy of this  
20 order upon **Sheriff Laurie Smith at the Santa Clara County Jail, 55 Younger St., San Jose,**  
21 **CA and upon George Centhaner, Mental Health Supervisor at Santa Clara Valley Medical**  
22 **Center, 751 S Bascom Ave, San Jose, CA.** The Clerk shall also mail a courtesy copy of the  
23 complaint and this order to the Santa Clara Office of the County Counsel at 70 West Hedding  
24 Street, East Wing, 9th Floor, San Jose, CA 95110.

25 3. In order to expedite the resolution of this case, the Court orders as follows:

26 a. No later than 91 days from the date this order is filed, Defendants must file  
27 and serve a motion for summary judgment or other dispositive motion. A motion for summary  
28 judgment also must be accompanied by a Rand notice so that plaintiff will have fair, timely and

1 adequate notice of what is required of him in order to oppose the motion. Woods v. Carey, 684  
2 F.3d 934, 939 (9th Cir. 2012) (notice requirement set out in Rand v. Rowland, 154 F.3d 952 (9th  
3 Cir. 1998), must be served concurrently with motion for summary judgment).<sup>5</sup>

4 If Defendants are of the opinion that this case cannot be resolved by summary judgment,  
5 Defendants must so inform the Court prior to the date the motion is due.

6 b. Plaintiff's opposition to the summary judgment or other dispositive motion  
7 must be filed with the Court and served upon Defendants no later than 28 days from the date the  
8 motion is filed. Plaintiff must bear in mind the notice and warning regarding summary judgment  
9 provided later in this order as he prepares his opposition to any motion for summary judgment.

10 c. Defendants shall file a reply brief no later than 14 days after the date the  
11 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due. No  
12 hearing will be held on the motion.

13 4. Plaintiff is advised that a motion for summary judgment under Rule 56 of the  
14 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must  
15 do in order to oppose a motion for summary judgment. Generally, summary judgment must be  
16 granted when there is no genuine issue of material fact — that is, if there is no real dispute about  
17 any fact that would affect the result of your case, the party who asked for summary judgment is  
18 entitled to judgment as a matter of law, which will end your case. When a party you are suing  
19 makes a motion for summary judgment that is properly supported by declarations (or other sworn  
20 testimony), you cannot simply rely on what your complaint says. Instead, you must set out  
21 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,  
22 as provided in [current Rule 56(c)], that contradict the facts shown in Defendants' declarations and  
23 documents and show that there is a genuine issue of material fact for trial. If you do not submit  
24 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.

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25 <sup>5</sup> If Defendants assert that Plaintiff failed to exhaust his available administrative remedies as  
26 required by 42 U.S.C. § 1997e(a), Defendants must raise such argument in a motion for summary  
27 judgment, pursuant to the Ninth Circuit's opinion in Albino v. Baca, 747 F.3d 1162 (9th Cir.  
28 2014) (en banc) (overruling Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003), which held  
that failure to exhaust available administrative remedies under the Prison Litigation Reform Act,  
should be raised by a defendant as an unenumerated Rule 12(b) motion). Such a motion should  
also incorporate a modified Wyatt notice in light of Albino. See Wyatt v. Terhune, 315 F.3d  
1108, 1120, n.14 (9th Cir. 2003); Stratton v. Buck, 697 F.3d 1004, 1008 (9th Cir. 2012).

1 If summary judgment is granted, your case will be dismissed and there will be no trial. Rand v.  
2 Rowland, 154 F.3d 952, 962–63 (9th Cir. 1998) (en banc) (App. A).<sup>6</sup>

3 5. All communications by Plaintiff with the Court must be served on Defendants'  
4 counsel by mailing a true copy of the document to Defendants' counsel. The Court may disregard  
5 any document which a party files but fails to send a copy of to his opponent. Until Defendants'  
6 counsel has been designated, Plaintiff may mail a true copy of the document directly to  
7 Defendants, but once Defendants are represented by counsel, all documents must be mailed to  
counsel rather than directly to Defendants.

8 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.  
9 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required  
10 before the parties may conduct discovery.

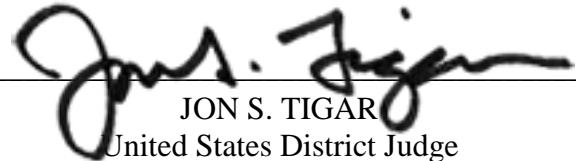
11 7. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the  
12 Court informed of any change of address and must comply with the Court's orders in a timely  
13 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
14 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every  
15 pending case every time he is moved to a new facility.

16 8. Any motion for an extension of time must be filed no later than the deadline sought  
17 to be extended and must be accompanied by a showing of good cause.

18 9. Plaintiff is cautioned that he must include the case name and case number for this  
19 case on any document he submits to the Court for consideration in this case.

20 IT IS SO ORDERED.

21 Dated: January 3, 2017



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23 JON S. TIGAR  
24 United States District Judge  
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